Matter of N. Y. etc. R. R. Co., 29 Hun 1, and where the taking necessitates the reconstruction of a tramway or interferes with machinery and structures for handling coal or stone, the cost of changing and reconstructing the apparatus so as to obviate the injury and conform to the new conditions, may be shown and considered in estimating damages. *Chicago, etc. Ry. Co.* v. *Wolf*, 137 Ill. 360, 27 N. E. 78; *Kersey* v. *Schuylkill River etc. R. R. Co.*, 133 Pa. St. 234, 19 Atl. 553; *Baird* v. *Schuylkill River E. S. R. R. Co.*, 154 Pa. St. 459, 25 Atl. 833. *In matter of N. Y. etc. R. R. Co.*, 29 Hun 646, it was held, in a case in which plaintiff was cut off from a channel of the river by a railroad, that the measure of damages was the cost of a causeway out to the railroad with an allowance for the extra distance to be traversed to get to the water. Where property is damaged by a change in grade it was held that the cost of adjusting the property to the new grade may be shown. *City of Topeka* v. *Martineau*, 42 Kan. 387, 22 Pac. 419; *Smith* v. *Kansas City*, 128 Mo. 23, 30 S. W. 314; *Manson* v. *Boston*, 163 Mass. 479, 40 N. E. 850, and so in general it may be said that the cost of adjusting the property to the changed conditions, brought about by the taking, or of alleviating or preventing the continuance of the damage, or of changing or reconstructing works so as to use the property as before, may properly be shown and considered in estimating how much the property has been damaged. *Fort Street Union Depot Co.* v. *Bachus*, 92 Mich. 33, 52 N. W. 790; *Phila. etc. R. R. Co.*, v. *Rogers*, 2 Walker's Pa. Sup. Ct. 275; *Hire* v. *Knisley*, 130 Ind. 295, 29 N. E. 1132; *Ehret* v. *Schuylkill River E. S. R. R. Co.*, 151 Pa. St. 158, 24 Atl. 1068; *Burnett* v. *Nicholson*, 86 N. C. 99; *Wilcox* v. *City of Meriden*, 57 Conn. 120, 17 Atl. 366; *Cooper* v. *Dallas*, 83 Tex. 239, 18 S. W. 565; *Patton* v. *Philadelphia*, 175 Pa. St. 88, 34 Atl. 344. But the damages are not necessarily measured by such cost. *Stewart* v. *Council Bluffs*, 84 Ia. 61, 50 N. W. 219; see also, *Koch* v. *Sackman-Phillips Inv. Co.*, 9 Wash. 405, 37 Pac. 703. However the general rule as laid down in the principal case for the ascertainment of damages, has been upheld generally. *Osgood* v. *Chicago*, 154 Ill. 194; *White* v. *Foxborough*, 151 Mass. 28, 23 N. E. 652; *Snyder* v. *Western Union R. R. Co.*, 25 Wis. 60. For other authorities see notes in 85 Am. St. Rep. 311, 19 Am. St. Rep. 459, also, 88 Am. Dec. 118. In *Robb* v. *Maysville etc. Co.*, 3 Metc. (Ky.) 117, the court in ascertaining the damages applied as a test, what would be its value to the injured party, situated as it is, if he were not the owner of it, but owned the adjacent property under the circumstances as they exist. This appears as an exception to the general rule, and is not followed to any considerable extent.

EVIDENCE—CONFESSION OF AN ALLEGED ACCOMPLICE.—In a prosecution for homicide, a confession made by an alleged accomplice, charging defendant with complicity in the crime, was admitted in evidence against the defendant, it being shown that before the information was filed against the accused but while he was in jail this confession was read to him in the presence of the author of it, and that the accused made no reply thereto. *Held*, that the confession might properly be read to the jury to support an inference of an assent by the accused to the statements of his complicity in the crime con-

tained therein, based upon his silence when it was read in his presence. *Commonwealth* v. *Ballon* (1911), — Pa. —, 78 Atl. 831.

This case seems not in accord with the general rule that evidence of the acts, confessions, and declarations of a co-conspirator or co-defendant, made after the accomplishment of their joint design, are not admissible against his co-conspirator or co-defendant. *Brown* v. *U. S.*, 150 U. S. 93; *People* v. *English*, 52 Cal. 212; *People* v. *Kief*, 126 N. Y. 661; *Logan* v. *U. S.*, 144 U. S. 263; *People* v. *Murphy*, 101 N. Y. 126. The only ground upon which the admission of this confession can be justified must be, that its being read to him raised a moral duty for him to deny it if it were not true, and that his failure to deny raised a presumption that he assented to its contents. The rule of law declaring that a person, in whose presence is made a statement imputing to him guilt of a crime, has a moral duty to deny the charge, and that his silence may be construed against him as an important circumstance tending to show assent on his part, is based upon the consideration that it is the common and almost universal impulse of a man who is innocent of any crime to immediately deny any charge against him made in his presence, and that the failure so to deny, being contrary to the almost universal impulses and instincts of upright and innocent men, raises a strong presumption that the imputation of guilt can not be denied. But it would seem that any such rule should have application only in cases where the accused is in a situation and environment which would permit the free and unrestrained expression of the natural promptings of his instincts and impulses, and should have no application to one placed, as was the defendant in the principal case, in a situation where all the circumstances would tend to repress the natural expression of his thoughts and feelings, and make him cautious and distrustful and entirely averse to giving expression to the true state of his emotions. The situation of the defendant is so different from that condition of affairs on the basis of which the rule of implied assent is necessarily founded as to make that rule entirely inapplicable to his conduct. And even though the trial court may have restricted the purpose for which the testimony was to be admitted and construed by the jury, yet when once admitted, the confession would produce its natural effect upon the minds of the jury, and a wrong impression once created may be of incalculable prejudice to the defendant in a trial for so serious an offense as murder. Upon the point directly involved in the principal case the weight of authority seems in principle to support the ruling there made. *Scott* v. *State*, 30 Ala. 503; *People* v. *Cotta*, 49 Cal. 166; *Green* v. *State*, 97 Tenn. 50; *McGuire* v. *People*, 3 Hun 213; *Murphy* v. *State*, 36 Ohio St. 628; *Mask* v. *State*, 32 Miss. 405. It should be noted however, that in most of these cases it does not appear that the defendant was surrounded by the peculiar and threatening circumstances and conditions surrounding the accused in the principal case. There is moreover some dissent to the doctrine of the cases just cited. *U. S.* v. *Matthews*, Fed. Cas. No. 15,741 b; *Morrison* v. *State*, 5 Ohio (5 Ham) 438; *Hauger* v. *U. S.*, 173 Fed. 54; *Godwin* v. *State*, — Del. —, 74 Atl. 1101; *State* v. *Blackburn*, — Del. —, 75 Atl. 536; *Maloney* v. *State*, — Ark. —, 121 S. W. 728; *Bulfer* v. *People*, 141 Ill. App. 70; *Sprouse* v. *Com.*, 132 Ky. 269, 116 S. W. 344.